

04/19/07 Council
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Zoning Case No. C14-06-0203
Zoning Case No. C14-06-0204

RESTRICTIVE COVENANT

OWNER Weldon J Schmidt

ADDRESS 9006 Cullen Lane, Austin, Texas 78748

OWNER A King Enterprises Management, Ltd , a Texas limited partnership

ADDRESS 9605 Orchid Hill, Dallas, Texas 75243

CONSIDERATION Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged

PROPERTY Lot 6, Block A, Tom F Dunnahoo Subdivision, a subdivision in the City of Austin, Travis County, Texas, as described in a deed of record in Volume 683, Page 1 of the Deed Records of Travis County, Texas, and
Lot 2, Block A, Tom F Dunnahoo Subdivision, replat of a portion of Lot 8, Tom F Dunnahoo Subdivision, a subdivision in the City of Austin, Travis County, Texas, as described in a deed of record in Volume 96, Pages 11 and 12 of the Deed Records of Travis County, Texas

WHEREAS, the Owners of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions,

NOW, THEREFORE, it is declared that the Owners of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owners of the Property, its successors and assigns

- 1 Hours of construction are limited to 7 00 a m to 7 00 p m
- 2 A building for a single tenant shall not exceed 25,000 square feet
- 3 A 24-hour business shall not operate within 200 feet of a single family residential property line
- 4 Outdoor containers used for storage or display of merchandise are prohibited
- 5 Dumpster placement shall be the more restrictive of i) a minimum of 150 feet from the west property line, or, ii) that required under the Commercial Design Standards in Chapter 25-2, Subchapter E (*Design Standards and Mixed Use*) of the City Code

- 6 Loading dock placement shall be the more restrictive of i) a minimum of 100 feet from the west property line, or, ii) that required under the Commercial Design Standards in Chapter 25-2, Subchapter E (*Design Standards and Mixed Use*) of the City Code
- 7 A loading dock located within 100 to 200 feet of the west property line may not be located on the west wall of a building
- 8 Delivery hours are limited to 7 00 a m to 10 30 p m
- 9 The noise level of mechanical equipment including outdoor speakers may not exceed 70 decibels at the west property line Any outdoor speakers shall either be oriented away from the single-family residential neighborhood to the west, or be screened by a device, wall, fence, structure, or other screening device
- 10 Outdoor lighting shall be limited to 20 feet in height and all fixtures shall be fully shielded with full cut-off light fixtures
- 11 At the time an application for approval of a site plan is submitted for development of the Property, or any portion of the Property, an Integrated Pest Management (IPM) plan shall be submitted to the Watershed Protection and Development Review Department for review and approval The IPM plan shall comply with the guidelines in Section 1 6 9 2 (D) and (F) of the Environmental Criteria Manual that are in effect on the date of this covenant
- 12 At the time an application for approval of a site plan is submitted for development of the Property, or any portion of the Property, a landscape plan shall be submitted to the Watershed Protection and Development Review Department for review and approval Ninety percent of the total plant material used, exclusive of turf, shall be native to Central Texas or on the Grow Green Native and Adapted Landscape Plants list, attached as Exhibit "A" Plants on the Invasive Species/Problem Plants list, attached as Exhibit "B", may not be included
- 13 If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions
- 14 If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect
- 15 If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it

- 16 This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination

EXECUTED this the _____ day of _____, 2007

OWNER:

Weldon J Schmidt

OWNER:

**A King Enterprises Management, Ltd ,
a Texas limited partnership**

By A King Enterprises, Inc ,
a Texas corporation,
General Partner

By _____
Alma King,
President

APPROVED AS TO FORM

Assistant City Attorney
City of Austin

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____, 2007, by Weldon J Schmidt

Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on this the _____ day of _____, 2007, by Alma King, President of A King Enterprises, Inc , a Texas corporation, General Partner of A King Enterprises Management, Ltd , a Texas limited partnership, on behalf of the corporation and the limited partnership

Notary Public, State of Texas

**After Recording, Please Return to
City of Austin
Department of Law
P O Box 1088
Austin, Texas 78767
Attention Diana Minter, Paralegal**

EXHIBIT A

Grow Green Native and Adapted Landscape Plants

Trees

Ash, Texas <i>Fraxinus texensis</i>	Oak, Escarpment Live <i>Quercus fusiformis</i>
Arizona Cypress <i>Cupressus arizonica</i>	Oak, Lacey <i>Quercus glaucoides</i>
Big Tooth Maple <i>Acer grandidentatum</i>	Oak, Monterey (Mexican White) <i>Quercus polymorpha</i>
Cypress, Bald <i>Taxodium distichum</i>	Oak, Shumard <i>Quercus shumardii</i>
Cypress, Montezuma <i>Taxodium mucronatum</i>	Oak, Texas Red <i>Quercus texana</i> (<i>Quercus buckleyi</i>)
Elm, Cedar <i>Ulmus crassifolia</i>	Pecan <i>Carya illinoensis</i>
Elm, Lacebark <i>Ulmus parvifolia</i>	Soapberry <i>Sapindus drummondii</i>
Honey Mesquite <i>Prosopis glandulosa</i>	
Oak, Bur <i>Quercus macrocarpa</i>	
Oak, Chinquapin <i>Quercus muhlenbergii</i>	
Oak, Southern Live <i>Quercus virginiana</i>	

Small Trees/Large Shrubs

Anacacho Orchid Tree <i>Bauhinia congesta</i>	Persimmon, Texas <i>Diospyros texana</i>
Buckeye, Mexican <i>Ungnadia speciosa</i>	Pistachio, Texas <i>Pistacia texana</i>
Buckeye, Red <i>Aesculus pavia</i>	Plum, Mexican <i>Prunus mexicana</i>
Carolina Buckthorn <i>Rhamnus caroliniana</i>	Pomegranate <i>Punica granatum</i>
Cherry Laurel <i>Prunus caroliniana</i>	Redbud, Mexican <i>Cercis canadensis</i> 'mexicana'
Crape Myrtle <i>Lagerstroemia indica</i>	Redbud, Texas <i>Cercis canadensis</i> var 'texensis'
Desert Willow <i>Chilopsis linearis</i>	Retama Jerusalem Thorn <i>Parkinsonia aculeata</i>
Dogwood, Roughleaf <i>Cornus drummondii</i>	Senna, Flowering <i>Cassia corymbosa</i>
Escarpment Black Cherry <i>Prunus serotina</i> var <i>eximia</i>	Smoke Tree, American <i>Cotinus obovatus</i>
Eve's Necklace <i>Sophora affinis</i>	Sumac, Flameleaf <i>Rhus lanceolata</i>
Goldenball Leadtree <i>Leucaena retusa</i>	Viburnum, Rusty Blackhaw <i>Viburnum rufidulum</i>
Holly, Possumhaw <i>Ilex decidua</i>	Viburnum, Sandankwa <i>Viburnum suspensum</i>
Holly, Yaupon <i>Ilex vomitoria</i>	
Mountain Laurel, Texas <i>Sophora secundiflora</i>	

Shrubs

Abelia, Glossy <i>Abelia grandiflora</i>	Nandina <i>Nandina domestica</i> 'Compacta nana' 'Gulf Stream'
Agave (Century Plant) <i>Agave sp</i>	Oleander <i>Nerium oleander</i>
American Beautyberry <i>Callicarpa americana</i>	Palmetto <i>Sabal minor</i>
Artemisia <i>Artemisia</i> 'Powis Castle'	Prickly Pear <i>Opuntia engelmannii</i> var <i>lindheimeri</i>
Barbados Cherry <i>Malpighia glabra</i>	Rose, Belinda's Dream <i>Rosa</i> 'Belinda's Dream'
Barberry, Japanese <i>Berberis thunbergii</i> 'Atropurpurea'	Rose, Lamarne <i>Rosa</i> 'Lamarne'
Basket Grass (Sacahuista) <i>Nolina texana</i>	Rose, Livin' Easy <i>Rosa</i> 'Livin' Easy'
Black Dalea <i>Dalea frutescens</i>	Rose, Marie Pavie <i>Rosa</i> 'Marie Pavie'
Bush Germander <i>Teucrium fruticans</i>	Rose, Martha Gonzales <i>Rosa</i> 'Martha Gonzales'
Butterfly Bush <i>Buddleia davidii</i>	Rose, Mutabilis <i>Rosa</i> 'Mutabilis'
Butterfly Bush, Woolly <i>Buddleia marrubifolia</i>	Rose, Nearly Wild <i>Rosa</i> 'Nearly Wild'
Coralberry <i>Symphoricarpos orbiculatus</i>	Rose, Old Blush <i>Rosa</i> 'Old Blush'
Cotoneaster <i>Cotoneaster sp</i>	Rose, Perle d'or <i>Rosa</i> 'Perle d'or'
Eleagnus <i>Eleagnus pungens</i>	Rock Rose <i>Pavonia lasiopetala</i>
Esperanza/Yellow Bells <i>Tecoma stans</i>	Rosemary <i>Rosmarinus officinalis</i>
Flame Acanthus <i>Anisacanthus quadrifidus</i> var <i>wrightii</i>	Sage, Mountain <i>Salvia regia</i>
Fragrant Mimosa <i>Mimosa borealis</i>	Sage, Texas (Cenizo) <i>Leucophyllum frutescens</i>
Holly, Burford <i>Ilex cornuta</i> 'Burfordii'	Senna, Lindheimer <i>Cassia lindheimeriana</i>
Holly, Dwarf Chinese <i>Ilex cornuta</i> 'Rotunda nana'	Southern Wax Myrtle <i>Myrica cerifera</i>
Holly, Dwarf Yaupon <i>Ilex vomitoria</i> 'Nana'	Sumac, Evergreen <i>Rhus virens</i>
Jasmine, Primrose <i>Jasminum mesnyi</i>	Sumac, Fragrant (Aromatic) <i>Rhus aromatica</i>
Kidneywood <i>Eysenhardtia texana</i>	Texas Sotol <i>Dasylirion texanum</i>
Lantana, Native <i>Lantana horrida</i>	Turk's Cap <i>Malvaviscus arboreus</i>
Mistflower, Blue (Blue Boneset) <i>Eupatorium coelestinum</i>	Yucca, Paleleaf <i>Yucca pallida</i>
Mistflower, White (Shrubby White Boneset) <i>Ageratina havanense</i>	Yucca, Red <i>Hesperaloe parviflora</i>
Mock Orange <i>Philadelphus coronarius</i>	Yucca, softleaf <i>Yucca recurvifolia</i>
	Yucca, Twistleaf <i>Yucca rupicola</i>

Perennials

Black-eyed Susan <i>Rudbeckia hirta</i>	Lantana, Trailing <i>Lantana montevidensis</i>
Bulbine <i>B. frutescens</i> or <i>caulescens</i>	Marigold, Mexican Mint <i>Tagetes lucida</i>
Bush Morning Glory <i>Ipomoea fistulosa</i>	Obedient Plant, Fall <i>Physostegia virginiana</i>
Butterfly Weed <i>Asclepias tuberosa</i>	Oregano, Mexican <i>Poliumantha longiflora</i>
Butterfly Weed 'Mexican' <i>Asclepias curassivica</i>	Penstemon <i>Penstemon</i> sp
Cast Iron Plant <i>Aspidistra elatior</i>	Phlox, Fragrant <i>Phlox pilosa</i>
Chile Pequin <i>Capsicum annuum</i>	Pink Skullcap <i>Scutellaria suffrutescens</i>
Cigar Plant <i>Cuphea micropetala</i>	Plumbago <i>Plumbago auriculata</i>
Columbine, Red <i>Aquilegia canadensis</i>	Poinciana, Red Bird of Paradise, Pride of Barbados
Columbine, Yellow <i>Aquilegia chrysantha</i> 'Texas Gold'	<i>Caesalpinia pulcherrima</i>
Coreopsis <i>Coreopsis lanceolata</i>	Primrose, Missouri <i>Oenothera macrocarpa</i>
Daisy, Blackfoot <i>Melampodium leucanthum</i>	Purple Coneflower <i>Echinacea purpurea</i>
Daisy, Copper Canyon <i>Tagetes lemmonii</i>	Ruellia <i>Ruellia brittoniana</i>
Damiantha <i>Crysactina mexicana</i>	Sage, Cedar <i>Salvia roemeriana</i>
Fall Aster <i>Aster oblongifolius</i>	Sage, Jerusalem <i>Phlomis fruticosa</i>
Fern, River <i>Thelypteris kunthii</i>	Sage, Majestic <i>Salvia guaranitica</i>
Firebush <i>Hamelia patens</i>	Sage, Mealy Blue <i>Salvia farinacea</i>
Gaura <i>Gaura lindheimeri</i>	Sage, Mexican Bush <i>Salvia leucantha</i>
Gayfeather <i>Liatris mucronata</i>	Sage, Penstemon, Big Red Sage <i>Salvia penstemonoides</i>
Giegg Dalea <i>Dalea greggii</i>	Sage, Russian <i>Perovskia atricplifolia</i>
Hibiscus, Perennial <i>Hibiscus moscheutos</i> , <i>Hibiscus coccineus</i>	Sage, Scarlet or 'Tropical' <i>Salvia coccinea</i>
Honeysuckle, Mexican <i>Justicia spicigera</i>	Salvia, Giegg (Cherry Sage) <i>Salvia greggii</i>
Hymenoxys (Four Nerve Daisy) <i>Tetrameuris scaposa</i>	Shrimp Plant <i>Justicia brandegeana</i>
Indigo Spires <i>Salvia</i> 'Indigo Spires'	Texas Betony <i>Stachys coccinea</i>
Iris, Bearded <i>Iris albicans</i>	Verbena, Prairie <i>Verbena bipinnatifida</i>
Iris, Butterfly/Bicolor (African) <i>Dietes</i> sp	Yarrow <i>Achillea millefolium</i>
Lamb's Ear <i>Stachys byzantina</i>	Zexmenia <i>Wedelia texana</i>
Lantana <i>Lantana x hybrida</i> (many varieties)	

Ornamental Grasses

Bluestem, Big *Andropogon gerardii*
 Bluestem, Bushy *Andropogon*
glomeratus
 Bluestem, Little *Schizachyrium*
scoparium
 Fountain Grass, Dwarf *Pennisetum*
alopecuroides
 Indian Grass *Sorghastrum nutans*
 Inland Sea Oats *Chasmanthium*
latifolium

Mexican Feathergrass (Wiregrass) *Stipa*
tenuissima
 Muhly, Bamboo *Muhlenbergia dumosa*
 Muhly, Big *Muhlenbergia lindheimeri*
 Muhly, Deer *Muhlenbergia rigens*
 Muhly, Gulf *Muhlenbergia capillaris*
 Muhly, Seep *Muhlenbergia reverchonii*
 Sideoats Grama *Bouteloua curtipendula*
 Wild Rye *Elymus canadensis*

Vines

Asian Jasmine *Trachelospermum*
asiaticum
 Carolina Jessamine *Gelsemium*
sempervirens
 Coral Vine *Antigonon leptopus*
 Crossvine *Bignonia capreolata*
 Fig Vine *Ficus pumila*

Honeysuckle, Coral *Lonicera*
sempervirens
 Lady Banksia Rose *Rosa banksiae*
 Passion Vine *Passiflora incarnata*
 Trumpet Vine *Campsis radicans*
 Virginia Creeper *Parthenocissus*
quinquefolia

Groundcover

Aztec Grass *Ophiopogon japonicus*
 Frogfruit *Phyla incisa*
 Horseherb *Calyptocarpus vialis*
 Leadwort *Plumbago Ceratostigma*
plumbaginoides
 Liriope *Liriope muscari*
 Monkey Grass (Mondo Grass)
Ophiopogon japonicus
 Oregano *Origanum vulgare*
 Periwinkle, Littleleaf *Vinca minor*
 Pigeonberry *Rivina humilis*

Purple Heart *Secreasea pallida*
 Santolina (Lavender Cotton) *Santolina*
chamaecyparissus
 Sedge, Berkeley *Carex tumulicola*
 Sedge, Meadow *Carex perdentata*
 Sedge, Texas *Carex texensis*
 Sedum (Stonedrop) *Sedum nuttallianum*
 Silver Ponyfoot *Dichondra argentea*
 Woolly Stemodia *Stemodia lanata*
(Stemodia tomentosa)

Turf Grasses

Bermuda 'Tif 419', 'Sahara', 'Baby',
 'Common'
 Buffalo '609', 'Stampede', 'Prairie'
 St Augustine 'Baby', 'Common',
 'Raleigh' 'Delmar'

Zoysia, Fine Leaf 'Matrella', 'Emerald',
 'Zorro'
 Zoysia, Coarse Leaf 'Japonica', 'Jamur',
 'El Toro', 'Palis'

EXHIBIT B

Invasive Species/Problem Plants

PLANTS TO AVOID

INVASIVES

(Plants that are non-native to the Central Texas ecosystem and tend to out-compete native species)

Do Not Plant

(Travel by seeds, berries, and spores so can be transported long distances. They have already invaded preserves and greenbelts)

- Arizona Ash
- Chinaberry
- Chinese Pistache
- Chinese Tallow
- Chinese Privet
- Elephant Ear
- Holly Fern
- Japanese Honeysuckle
- Ligustrum, Wax Leaf
- Mimosa
- Mulberry, Paper
- Nandina (large, berrying varieties)
- Photinia, Chinese
- Pyracantha
- Tamarisk
- Tree of Heaven

Do Not Plant Near

Parks/Preserves/Greenbelts

(travel by runners, rhizomes, and stems so only invade neighboring areas)

- Bamboo
- English Ivy
- Vinca (Periwinkle)

PROBLEM TREES AND SHRUBS

(Typically fast-growing, highly adaptable, but often have weak wood and are short-lived. Most are susceptible to insect and disease problems.)

- Arizona Ash
- Azalea (not adapted to Austin soils)
- Boxelder
- Camellia
- Chinaberry
- Chinese Privet
- Chinese Tallow
- Cottonwood
- Ligustrum
- Lombardy Poplar
- Mimosa
- Mulberry, Paper
- Photinia, Chinese
- Siberian Elm
- Silver Maple
- Sweetgum
- Sycamore
- Tree of Heaven